

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARY B. SMITH,
Plaintiff

vs.

DAVID C. NICHOLSON, TRUSTEE
OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI,
TRUSTEE OF THE DOMINIC M.
SAWICKI NOMINEE TRUST,
AND CAROL ANN WHITNEY
AND GLENN WHITNEY,
Defendants

CIVIL ACTION NO.: 04 CV 10632 MEL

**DEFENDANTS, DAVID C. NICHOLSON, TRUSTEE OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI, TRUSTEE OF THE DOMINIC M. SAWICKI NOMINEE
TRUST, CAROL ANN WHITNEY AND GLENN WHITNEY'S
JOINT MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 04CV10632MEL

MARY B. SMITH

)

Plaintiff,)

vs.)

DAVID C. NICHOLSON, ET AL

)

Defendants.)

DEPOSITION OF Mary B. Smith, taken in
behalf of the defendant, pursuant to the
applicable provisions of the Massachusetts Rules
of Civil Procedure, before Charlene Jones, Court
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the offices of
Curley & Curley, 27 School Street, Boston,
Massachusetts, on Wednesday, May 11, 2005,
commencing at 10:20 a.m.

LAPLANTE & ASSOCIATES, INC.
(508) 999-7499

1 Cape?

2 A. I think it'll be a year. Probably a
3 year I would think.

4 Q. And the last time you were there who did
5 you stay with?

6 A. We stayed in a motel.

7 Q. Do you own any property on the Cape now?

8 A. Not now, no.

9 Q. On the day of the accident were you
10 taking your blood pressure medication?

11 A. Oh, yes. Every morning I do.

12 Q. At that time were you taking any other
13 medication?

14 A. No.

15 Q. When the fall occurred where were you
16 coming from?

17 A. A funeral, a funeral from the Lutheran
18 Church in South Orleans.

19 Q. And whose funeral was it?

20 A. It was the funeral of the mother, the
21 wife, at the house where I fell,
22 Mrs. Pat Nicholson.

23 Q. Had you ever met Mrs. Nicholson?

24 A. No, I didn't know her, but my --

1 Q. Do you know David Nicholson?

2 A. No, I don't know him either. But my
3 soon-to-be daughter-in-law was very good friends
4 of theirs and that's why we went there after the
5 funeral. We were asked to come back to the house
6 after the funeral and we all did.

7 Q. Who's your daughter-in-law?

8 A. Beg your pardon.

9 Q. Who is your future daughter-in-law at
10 the time?

11 A. Joanne Dayton was her name then.

12 Q. What's her name now?

13 A. It's still Joanne Dayton. It didn't
14 happen.

15 Q. Who was she supposed to marry?

16 A. I beg your pardon.

17 Q. Who was she supposed to marry?

18 A. I don't know how serious it was, but
19 I'll tell you my son David Smith, but I don't
20 know how serious that was.

21 Q. Were they engaged?

22 A. No.

23 Q. Do you know where Joanne lives on the
24 Cape at that time I mean ballpark?

1 A. I've been to her house. I'm sorry.
2 It's in South Orleans, but I can't tell you the
3 street.

4 Q. And how did you come about to go to the
5 funeral, can you tell me how that happened?

6 A. Oh, Mrs. Nicholson's son Paul, he, was a
7 very good friend of Mrs. Dayton's, Joanne
8 Dayton's daughter or son. I don't know how the
9 relationship was there, and we are all at the
10 funeral and we went back to Nicholson's and I
11 never got there.

12 Q. I'll just ask you the question in a
13 little different way. I think I was confusing
14 you a little bit. Who invited you or who told
15 you about the funeral?

16 A. Oh, Joanne Dayton and I went with her.

17 Q. Do you remember when she told you about
18 the funeral, was it the day before?

19 A. Oh, like he had died say a Thursday and
20 we went to the funeral a Saturday. Right away
21 like the next day or something like that.

22 Q. Did she ask you to go with her?

23 A. Yes, she did. I said he. She had died.
24 Mrs. Nicholson had died.

1 Q. About what time did the fall occur?

2 A. Around 2:00 in the afternoon on a bright
3 sunny day like this.

4 Q. And the last place you were before Old
5 Lantern Lane was that the church?

6 A. The church. We came from church.

7 Q. And before the church where were you?

8 A. Home.

9 Q. Home?

10 A. Yeah.

11 Q. And did you go anywhere else that day?

12 A. No.

13 Q. How did you get from your home to the
14 church?

15 A. Joanne Dayton in her car.

16 Q. She came and picked you up?

17 A. Yes, she did.

18 Q. Who else was in the car?

19 A. Just she and I. That's it.

20 Q. Did she drive you from the church to the
21 Old Lantern Lane?

22 A. She did.

23 Q. Was anyone else in the car at that time?

24 A. No, just the two of us.